

## INTERNAL REVENUE SERVICE - REVENUE RULING 81-100

This revenue ruling dated March 30, 1981, restates and consolidates the positions stated under Rev. Rul. 56-267, 1956-1 C.B. 206 and Rev. Rul. 75-530, 1975-2 C.B. 146, under current law.

The revenue rulings concern the effect on the tax exempt status of trust forming parts of qualified retirement plans and individual retirement accounts of an arrangement under which the individual trust pool their assets in a group trust (usually created for the purpose of providing diversification of investments), where the group trust is declared to be part of the qualified plan or individual retirement account and the trust instruments creating both the participating and group trust provide that amounts shall be transferred from one trust to the other at the direction of trustee of the participating trust.

Section 501(1) of the Internal Revenue Code provides, in part, that a trust described in Section 401(a) shall be exempt from income tax.

Section 401(a)(1) of the Code provides, in effect, that a trust or trusts created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries shall be qualified under this section if contributions are made to the trust or trusts by such employer, or employees for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated in accordance with such plan.

By making contributions to a participating trust, which provides that from time to time amounts so contributed may be transferred to and from a specified group trust, the employer and any participating employees, in effect, make contributions to the group trust for purposes of Section 401(a)(1).

Section 401 (a)(2) of the Code provides that under each trust instrument it must be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the plan and the trusts, for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees of their beneficiaries.

Section 408(e)(1) of the Code provides for the exemption from taxation of individual retirement accounts which meet the requirements of Section 408. Section 408(a)(5) provides that the assets of the trust (individual retirement account) may not be commingled with other property except in a common trust fund or common investment fund. With regard to Section 408(a)(5), the Conference Committee stated that the conferees intend that the assets of qualified individual retirement accounts may be pooled with the assets of qualified Section 401(a) trusts. The conferees intended that the group trust itself will be entitled to exemption from tax under the Code. See Conference Report No. 93-1280, 93rd Cong., 2nd Sess. 337 (1974), 1974-3 C.B. 415, 498.

Held, if the requirements below are satisfied, a group trust is exempt from taxation under Section 501(a) of the Code with respect to its funds which equitably belong to participating trust described in Section 401(a) and is exempt from taxation under Section 408(e) with respect to its funds which equitably belong to individual retirement accounts, which satisfy the requirements of Section 408. Also the status of individual trusts as qualified under Section 401(a) or meeting the requirements of Section 408 of the Code and exempt from tax under Section 501(a) or 408(e), respectively, will not be affected by the pooling of their funds in a group trust if the following requirements are satisfied.

(1) The group trust is itself adopted as a part of each individual retirement account or employer's pension or profit-sharing plan.

(2) The group trust instrument expressly limits participation to individual retirement accounts which are exempt under Section 408(e) of the Code and employer's pension and profit-sharing trust which are exempt under Section 501(a) of the Code by qualifying under Section 401(a).

**(3) The group trust instrument prohibits that part of its corpus or income which equitably belongs to any individual retirement account or employer's trust from being used for or diverted to any purposes other than for the exclusive benefit of the individual or the employees, respectively, or their beneficiaries who are entitled to benefits under such participating individual retirement account or employer's trust.**

**(4) The group trust instrument prohibits assignment by a participating individual retirement account or employer's trust of any part of its equity or interest in the group trust.**

**(5) The group trust is created or organized in the United States and is maintained at all times as a domestic trust in the United States.**

**Rev. Rul. 56-267 and Rev. Rul. 75-530 are superseded because the positions stated therein are restated under current law in this revenue ruling.**